



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 481

IN THE MATTER OF CHARLES W. MANN

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Charles W. Mann ("Rep. Mann"), pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 27, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of conflict of interest law, G.L. c. 268A, by Rep. Mann. The Commission has concluded its inquiry and, on August 9, 1993, found reasonable cause to believe that Rep. Mann violated G.L. c. 268A.

The Commission and Rep. Mann now agree to the following findings of fact and conclusions of law:

1. Rep. Mann has served in the House of Representatives from 1966-1970, and from 1980 to the present. Rep. Mann also served as the Assistant Legislative Secretary to Governor Sargent from 1970-1974. Beginning in 1991, he has sat on the Joint Committee on Banks and Banking. As a legislator, Rep. Mann is a state employee as that term is defined in G.L. c. 268A, §1(q).

2. Rep. Mann owned a lakefront cottage in Pembroke. On July 19, 1989, he refinanced a \$105,000 mortgage on the cottage with the Bridgewater Credit Union ("BCU"). In June 1990, Rep. Mann's mortgage became delinquent with an unpaid principal balance of \$104,362.48. Following an unsuccessful workout period, BCU purchased the property for \$96,500. The credit union then sued Rep. Mann on July 19, 1991 for an alleged deficiency. Rep. Mann brought a counter claim against BCU asserting that the Credit Union failed to use due diligence in giving notice of its foreclosure sale. On December 21, 1992, BCU and Rep. Mann settled the suit for \$10,000.

3. Rep. Mann and former BCU Director John Peck have been partners in real estate ventures since the early 1980s. In connection with one of their development projects, Rep. Mann and Peck borrowed \$120,000 from BCU on September 25, 1986, to purchase two lots of land on Elm Street in Hanson. Beginning in spring 1990, the partners routinely fell behind in their payments, and stopped making payments altogether in March 1991 leaving an unpaid principal balance of \$115,178.74. On November 21, 1991, BCU notified Peck and Rep. Mann that it would foreclose on the Elm Street properties on December 9, 1991. Ultimately, BCU conducted a foreclosure sale on August 12, 1992 at which it sold the lots for \$78,000. The credit union later brought suit against the partners for an alleged deficiency.^{1/}

4. BCU is a corporation organized under G.L. c. 171 for the purpose of accumulating and investing the savings of its members and making loans to them. Each credit union must have a board of directors to provide the general direction for its affairs. The credit union's membership elects the board of directors. As part of their duties, BCU directors determine whether and when to foreclose on delinquent loans, whether to write off mortgage deficiencies as losses or to pursue them with collection actions, whether to settle collection actions for less than the full deficiency, and whether to enter into other loan workout agreements.

5. Under G.L. c. 167, §22, the state Commissioner of Banks may take possession of a banking institution if he certifies that it is in an unsound and unsafe condition to transact the business for which it was organized. Acting under

this authority, Banking Commissioner Michael Hanson certified BCU on October 18, 1991, and placed it under the control of the Massachusetts Credit Union Share Insurance Corporation. The Commissioner based his certification decision on the findings of successive annual bank examination reports dated February 28, 1990, and February 1, 1991. The certification effectively removed the sitting eleven member board of directors.^{2/}

6. The ousted directors disputed the certification. They met on a number of occasions at the Halifax Country Club to devise a strategy to secure their reinstatement. Rep. Mann and Rep. Jacqueline Lewis were invited to and attended one of these meetings in November 1991. They agreed to meet with Banking Commissioner Hanson to determine why he took the certification action.

7. On November 29, 1991, Rep. Mann and Rep. Lewis met with First Deputy Banking Commissioner Thomas Curry and Chief Examiner of Credit Union Examinations John McWhirter. (Hanson did not attend the meeting.) During the meeting, Rep. Mann questioned the Commissioner's aides as to the basis of the certification decision. Upon being informed of some of the banking violations^{3/} underlying the certification, Rep. Mann characterized them as minor, stating that "there are violations, and then there are violations." Although Rep. Mann did not request that the Commissioner change his certification decision, he expressed his strong disagreement with the Commissioner's decision.

8. Following the November 29, 1991 meeting, the ousted directors desired a hearing or appeal before the Governor and asked Rep. Mann to set up a meeting. Rep. Mann declined, but agreed to arrange a meeting with then Special Assistant to the Governor Stephen Tocco. Rep. Mann briefed Tocco on the increasingly public dispute^{4/} and requested that he "hear the directors' side of the story." Tocco met with three of the ousted directors, but took no action on their concerns.

9. The ousted directors also collected the signatures of 385 BCU shareholders in connection with a petition that made 16 demands on the Banking Commissioner. The petition demanded the Commissioner fully disclose the details of the administration of BCU since its certification. The directors addressed the petition to Rep. Mann and Rep. Lewis, with the request that they present it to the Commissioner. Rep. Lewis delivered the petition and signatures to the Commissioner.

10. The Commission discovered no evidence that in return for the legislative efforts, the ousted directors promised favorable loan treatment to Rep. Mann, or his partner Peck. Nor did the Commission unearth any evidence that Rep. Mann threatened the Banking Commissioner with adverse political consequences if he did not change the certification decision.^{5/}

11. General laws c. 268A, §6 prohibits a state employee from participating as such in any particular matter in which, to his knowledge, he or his partner has a financial interest.

12. The controversy as to Commissioner Hanson's certification of BCU was a particular matter.^{6/} In addition, Rep. Mann's asking the Governor's Special Assistant to hear the former directors' grievances was tantamount to a request for a determination whether the certification decision was proper. That request was also a particular matter.

13. Rep. Mann and his partner Peck had a reasonably foreseeable financial interest in these particular matters because the ousted directors, if reinstated through a reversal of the certification, would have been in the position to make litigation and loan workout decisions affecting Rep. Mann's and Peck's financial interests in the delinquent and foreclosed upon loans.^{7/}

14. By meeting with the Commissioner's staff and arranging the Tocco meeting, Rep. Mann participated in the controversy surrounding the public dispute between the Banking Commissioner and the former BCU directors. Moreover, by arranging the meeting with the Governor's Special Assistant, Rep. Mann participated in what was effectively a request for a determination.

15. By involving himself in the BCU certification controversy, as described above, Rep. Mann officially participated in particular matters in which to his knowledge he and his partner possessed a financial interest. By doing so, Rep. Mann violated G.L. c. 268A, §6.

16. The Commission is unaware of any evidence to indicate Rep. Mann knew he was participating in "particular matters" and therefore violating §6 when he acted as described above.^{8/}

In view of the foregoing violation of G.L. c. 268A by Rep. Mann, the Commission has determined that the public interest would be served by the disposition of this matter without further Enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Mann:

(1) that Rep. Mann pay to the Commission the sum of five hundred dollars (\$500.00) as a civil penalty for violating G.L. c. 268A, §6;

(2) that Rep. Mann waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any other related administrative or judicial proceeding to which the Commission is or may be a party.

Date: March 1, 1994

^{1/} The terms of the mortgage note provided for joint and several liability. Therefore, Rep. Mann was potentially liable for the entire deficiency.

^{2/} Since December 1992, the credit union has been released from the control of the Massachusetts Credit Union Share Insurance Corporation and is now operating on its own.

^{3/} Citing confidentiality concerns, the staffers refused to disclose all of the banking violations uncovered in the 1990 and 1991 examination reports.

^{4/} The local print media and cable television station provided considerable news coverage of the directors' removal.

^{5/} The Commission based its decision to impose a modest sanction in this case on its finding that Rep. Mann did not attempt to place undue pressure on Administration officials to act in a manner that would benefit himself or his partner Peck. Compare *In re Craven*, 1980 §17 (maximum fine allowed by law imposed on legislator serving on House Ways and Means Committee who pressured Department of Community Affairs to fund the Jamaica Plain Community Development Foundation [which had entered into a lease agreement with the legislator's family real estate trust] or risk adverse budget action).

^{6/} General laws c. 268A, §1(k) defines "particular matter" in part as "any judicial or other proceeding, application, submission, *request for a ruling or other determination*, contract, claim, *controversy*, charge, accusation, arrest, decision, determination [or] finding..." (emphasis added).

^{7/} Under §6, a government official may not participate in matters that determine the personnel who will make decisions regarding that official's financial interests. See *EC-COI-93-17* (selectman, who was employed as local teacher, could not participate in reappointment of Town Manager, an appointee who would be a voting member of the school department's collective bargaining team); *EC-COI-86-25* (city councillor, who was employed as local teacher, would not participate in selection of new school committee member, an appointee who could negotiate teacher's collective bargaining agreement).

^{8/} Ignorance of the law is no defense to a violation of G.L. c. 268A. *In re Doyle*, 1980 SEC 11, 13. See also, *Scola v. Scola*, 318 Mass. 1, 17 (1945).